

### **Remarks**

Claims 30 and 32-36 are currently pending in the Application. Claim 30 is the only independent claim. Claims 33-36 were previously withdrawn. Claims 30 and 32 stand rejected under 35 U.S.C. 102(b) as anticipated by USPN 4,315,509 to Smit. Claims 30 and 32 also stand rejected under 35 U.S.C. 103(a) as being unpatentable over both Smit in view of USPN 5,820,584 to Crabb as well as over USPN 5,246,456 to Wilkinson in view of Crabb.

Entry is requested of the current amendments to claim 30 (the Advisory Action of 4.17.08 indicated that the amendments provided in the response submitted on 3.19.08 were not entered). The current amendments require that the storage provided in claim 30 be a rigid receptacle that is more rigid than the tubes connected to that storage. These amendments are provided to place the application in condition for allowance and, in the alternative, to simplify the issues for appeal.

Support for these amendments may be found in the specification as originally filed. Specifically, the specification indicates that the implant (which includes a hollow body and two tube-like end sections) may be a "flexible hollow body" (page 5 lines 18-23) and further indicates that the central portion 4 may be flexible (pg 6 lines 4-16). The specification then goes on to disclose that the central portion may be designed as rigid receptacle (pg 6 lines 26-27).

#### **35 U.S.C. 102 (b) Rejection: Smit**

Claim 30, as amended, is not anticipated by USPN 4315509 to Smit at least because Smit does not disclose a synthetic stomach having a bulging storage connected to two tubes, wherein the storage is a receptacle that is more rigid than the two tubes. Additionally, in contrast to the assertions in the pending office action, Applicant finds no disclosure in Smit Figs. 1 or 2 (or throughout entire Smit specification) that teaches a storage bulging relative to two tubes connected to it. Accordingly, Applicant respectfully requests that the Examiner specifically identify and point out such features if he maintains that Smit discloses these features so that a proper response may be provided. Notwithstanding, the lack of specificity in the Examiner's rejections the amendments provided herein further distinguish the claim 30 from Smit and accordingly claim 30 is not anticipated by Smit.

Claim 32 depends from claim 30 and is not anticipated by Smit for at least the same reasons that claim 30 is not anticipated by Smit.

35 U.S.C. 103 (a) Rejection: Smit in view of Crabb

Claim 30 is not obvious in view of Smit and Crab at least because it would not be obvious to one of ordinary skill in the art to combine Smit and Crab and further because the combination of Smit and Crabb would not provide every element of claim 30. The Examiner asserts that the Smit device is designed to be a semi-rigid receptacle thus anticipating a rigid receptacle and the Examiner further asserts that Crabb is designed to be rigid. If the Examiner's assertions were true and both devices disclosed rigid implants without disclosing the level of rigidity, then a combination of the devices disclosed in the references could not be said to provide a bulging storage that is more rigid than downstream and upstream tubes connected to the storage, as there would be no basis for making such a comparison. Accordingly, there is no teaching or suggestion that the combination that the Examiner has suggested (i.e. modify the device disclosed by Smit to include rigid components as taught by Crabb) provide an implant that has a more rigid storage than the tubes connected to the storage.

Crabb teaches an elongated open-ended tube 22 as a duodenal insert 20 (see Fig. 3 and col. 4 lines 6-11). Crabb also teaches that the insert may be manufactured out of a more rigid material (col. 4 lines 26-28). Since Crabb teaches making the tubular duodenal insert from a rigid material combining the rigid components taught by Crabb (i.e. a rigid tube) with Smit would not teach or suggest the invention as claimed. In fact such a combination would provide a sharp contrast to the claimed invention because if Smit actually taught a storage that bulges relative to a tube connected at its upstream opening and a tube connected at its downstream opening, which Applicant maintains that it doesn't, combining such a storage with a rigid tube as taught by crab would provide a combination that has a tube which is more rigid than the storage.

Furthermore, although the Examiner has indicated that it is "unclear how a rigid tube when anchored could pass out the anus," Applicant strongly urges the Examiner not to ignore the express teachings of Smit, which clearly indicate that the tubular implant disclosed in his patent includes a very thin-walled tube and that as a result of the tubes walls the small

intestine does not tend to gather itself and bunch up along the tube. Even if the Examiner does not understand what Smit has described he should not simply discount or dismiss Smit's explicit disclosure indicating that it is not uncommon for the entire small intestine to gather itself along a section of stiff tubing and then to pass that tubing out the anus. (*Note: end 40 is not anchored*) The disclosure highlights the fact that one of ordinary skill in the art following the teachings of Smit would be unlikely to combine the teachings of Smit with the teachings provided by Crabb. If Smit teaches that rigid or stiff tubing would negatively impact his device, then that clearly teaches away from combining Smit with Crabb's teaching of rigid tubing.

Accordingly, claim 30 should be patentable over Smit in view of Crabb for at least the aforementioned reasons.

Claim 32 depends from claim 30 and should be patentable over Smit in view of Crabb for at least the same reasons that claim 30 should be.

35 U.S.C. 103 (a) Rejection: Wilkinson in view of Crabb

Wilkinson also fails to disclose a bulging storage connected to two tubes, wherein the storage is more rigid than the tubes connected to it as provided by claim 30. Applicant also maintains that Wilkinson nowhere discloses an implant that consists of a storage bulging relative to two tubes connected to it. Accordingly, Applicant respectfully requests that the Examiner identify the features provided in Wilkinson that correspond to each of the elements claimed in Applicant's invention so that Applicant might respond appropriately.

Furthermore, while claim 30 was rejected as being unpatentable over Wilkinson in view of Crabb, Applicant notes that combining the teachings of Crabb that provide a rigid tubular implant with the teachings of Wilkinson, which the examiner concedes lacks "the express disclosures of the device being rigid," clearly does not teach or suggest an implant wherein tubes are provided that are less rigid than a storage they are connected to. Thus, claim 30 should be patentable over Wilkinson in view of Crabb.

Claim 32 depends from claim 30 and should be patentable over Wilkinson in view of Crabb for at least the same reasons that claim 30 should be.

For the reasons set forth above, it is submitted that all pending claims are allowable over the art of record. Reconsideration of the claims and a notice of allowance are therefore respectfully requested.

Applicant's undersigned representative requests that the Examiner contact him at (617) 443-9292 to expedite the resolution of any remaining questions or concerns, particularly regarding entry of the requested amendment.

Respectfully submitted,

/Moses A. Heyward, #61,140/

Moses A. Heyward  
Registration No. 61,140  
Agent for Applicants

Bromberg & Sunstein LLP  
125 Summer Street  
Boston, MA 02110-1618  
(617) 443-9292

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